

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 22, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GERALD HALSEY, BETTY
HALSEY, GERALD R HALSEY
and/or BETTY J HALSEY LIVING
TRUST, MICHAEL CESKE, IRIS
MALLORY, and LUCIAN LYONS,

Plaintiffs,

v.

STEPHEN CROSKREY and BONASA
BREAKS RANCH LLC, a Florida
limited liability corporation,

Defendants.

No. 2:20-cv-00371-SMJ

**ORDER DENYING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

Before the Court is Plaintiffs' Motion for Summary Judgment Dismissal of Affirmative Defense No. 10 (Business Judgment Rule), ECF No. 57. Because Plaintiffs essentially seek a ruling on the applicable legal standard, the Court finds this issue inappropriate for resolution on summary judgment. Accordingly, for the reasons set forth below, the Court denies the motion.

BACKGROUND

This case centers on catastrophic damage to real property allegedly caused by the negligent construction of a raised dam. *See generally* ECF No. 9. Defendant Bonasa Breaks Ranch, LLC, a Florida limited liability corporation ("the

1 Corporation”), owns a parcel of land in Asotin County that is at the headwaters of
2 Rattlesnake Creek—a tributary to the Grande Ronde River. *Id.* at 3. SEC Holdings,
3 LLC (“SEC Holdings”) owned the Corporation at all relevant times to this action,
4 and Stephen Croskrey was the managing member of SEC Holdings at all relevant
5 times. ECF No. 74 ¶ 3–4. SEC Holdings was, at all relevant times, the sole member
6 of the Corporation. *Id.* ¶ 16. It is undisputed that Defendant Croskrey supplies the
7 capital for SEC Holdings, which in turn supplies the capital for the Corporation. *Id.*
8 ¶ 5.

9 The Corporation purchased the parcel of land in 2004, which at the time
10 featured a small pond. *Id.* ¶ 8. Defendant Croskrey, as managing member of SEC
11 Holdings, hired Tommy Mullins—an equipment operator—to repair and raise the
12 earthen walls of the pond (*i.e.*, the dam). Defendant Croskrey also hired Kenneth
13 Thornton—a foreman—to supervise the property and perform pond improvement
14 work. *Id.* ¶ 18. Mr. Mullins and Mr. Thornton then raised the dam; Mr. Mullins
15 operated the earth moving equipment and Mr. Thornton leveled the dam walls.

16 The dam failed in April of 2017, releasing approximately ten million gallons
17 of water and causing catastrophic flooding and damage to Plaintiffs’ properties.
18 Plaintiffs, each owners of real property along Rattlesnake Creek, sued both the
19 Corporation and Croskrey for trespass, negligence, negligence per se, nuisance,
20 negligent infliction of emotional distress (NEID), and strict liability. ECF No. 9

1 at 7.

2 After the Court granted Defendants leave to amend, Defendants filed a
3 fifteen-page answer, raising eleven affirmative defenses. Relevant here,
4 Defendants' Tenth Affirmative Defense asserts that Croskrey is immunized from
5 liability for actions taken on behalf of the corporation under the business judgment
6 rule ("BJR"). ECF No. 59 at 13. Specifically, Defendants submit that:

7 Defendant Stephen Croskrey alleges that he is immunized from
8 liability for actions on behalf of the corporation under the business
9 judgment rule, because any causally relevant actions he took relating
10 to the events alleged in this complaint were made within the power of
the corporation and within Mr. Croskrey's authority as management.
Furthermore, Mr. Croskrey's exercises of business judgment were
done in good faith.

11 *Id.* (citations omitted).

12 Plaintiffs dispute the legal standard cited in this affirmative defense, arguing
13 that the BJR does not protect a defendant who did not exercise reasonable care. ECF
14 No. 57 at 12. Because Plaintiff's negligence claim requires them to prove a lack of
15 reasonable care, and because the business judgment rule incorporates that standard,
16 Plaintiffs submit that Defendant's tenth affirmative defense should be dismissed as
17 a "nullity." *Id.* at 13.

18 LEGAL STANDARD

19 The Court must grant summary judgment if "the movant shows that there is
20 no genuine dispute as to any material fact and the movant is entitled to judgment as

1 a matter of law.” Fed. R. Civ. P. 56(a). A fact is “material” if it “might affect the
2 outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477
3 U.S. 242, 248 (1986). A dispute about a material fact is “genuine” if “the evidence
4 is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

5 In ruling on a summary judgment motion, the Court must view the evidence
6 in the light most favorable to the nonmoving party. *See Tolan v. Cotton*, 572
7 U.S. 650, 657 (2014). Thus, the Court must accept the nonmoving party’s evidence
8 as true and draw all reasonable inferences in its favor. *See Anderson*, 477 U.S. at
9 255. The Court may not assess credibility or weigh evidence. *See id.* Nevertheless,
10 the nonmoving party may not rest upon the mere allegations or denials of its
11 pleading but must instead set forth specific facts, and point to substantial probative
12 evidence, tending to support its case and showing a genuine issue requires
13 resolution by the finder of fact. *See Anderson*, 477 U.S. at 248–49.

14 DISCUSSION

15 Plaintiffs admit they are not seeking a ruling that Defendant Croskrey was
16 negligent. Instead, they are seeking a ruling on the applicable legal standard for the
17 BJR. *See* ECF No. 69 at 4 (“Our motion seeks to establish that under the BJR, Mr.
18 Croskrey’s actions are judged by the traditional negligence due care standard.”).
19 But summary judgment is reserved for cases where the moving party can show there
20

1 are no genuine issues of material fact on a particular issue. Here, Plaintiff fails to
2 make such an argument.

3 The question presently before the Court is not whether there are no genuine
4 issues of material fact as to whether Defendant Croskrey acted in good faith and
5 with proper care, skill, and diligence. *See Montclair United Soccer Club v. Count*
6 *Me In Corp.*, No. C08-1642-JCC, 2009 WL 2985475 at *4 (W.D. Wash. Sept. 14,
7 2009). Instead, Plaintiffs ask this Court to strip Defendant Croskrey of the BJR
8 defense because the legal standard reiterates the negligence standard and renders
9 the defense illusory.

10 But summary judgment is not an opportunity to argue about what legal
11 standard applies. This issue is more appropriately taken up when the Court
12 addresses the jury instructions for trial, as the parties will have an opportunity to
13 submit and brief proposed jury instructions. Although the Court finds that
14 Defendants may have stated the business judgment rule too narrowly in their Tenth
15 Affirmative Defense, the Court declines to summarily bar them from raising the
16 defense at all. And to the extent Plaintiffs seek a ruling that the BJR does not apply
17 to Defendant Croskrey, the Court declines to make such a ruling when there remain
18 issues of material fact regarding his conduct.

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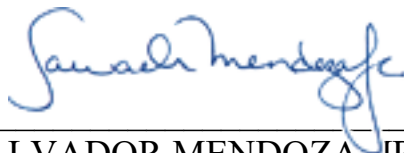
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3 Accordingly, **IT IS HEREBY ORDERED:**

4 **1.** Plaintiffs' Motion for Summary Judgment Dismissal of Affirmative
5 Defense No. 10 (Business Judgment Rule), **ECF No. 57**, is **DENIED**.

6 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
7 provide copies to all counsel.

8 **DATED** this 22nd day of December 2021.

9 

10 SALVADOR MENDOZA, JR.
11 United States District Judge